

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CARL FOWLER,

Defendant.

Case No. 11-cr-20468-33

SENIOR U.S. DISTRICT JUDGE  
ARTHUR J. TARNOV

U.S. MAGISTRATE JUDGE  
MONA K. MAJZOUB

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**ORDER DENYING MOTION FOR MODIFICATION OR REDUCTION OF SENTENCE  
[1620]**

Defendant Carl Fowler filed a Motion for Modification or Reduction of Sentence [1620] on July 18, 2017. The Government filed a Response [1640] on December 1, 2017. For the reasons stated below, the Motion is **DENIED**.

**FACTUAL AND PROCEDURAL BACKGROUND**

On March 7, 2014, a jury convicted Fowler of Health Care Fraud Conspiracy (Count I); Conspiracy to Distribute Controlled Substances (Count XI); and Conspiracy to Pay/Receive Health Care Kickbacks (Count XXI).

The Court held a Sentencing Hearing on October 28, 2014. The Court sentenced Fowler to 72 months of imprisonment on all three counts to run concurrently.<sup>1</sup> [Dkt. #1306].

On October 31, 2014, Fowler filed a Notice of Appeal [1299]. On April 7, 2016, the Sixth Circuit vacated Fowler's sentence and remanded to the district court for resentencing. *United States v. Fowler*, 819 F.3d 298, 310 (6th Cir. 2016).

The Court held a Resentencing Hearing on December 6, 2016. At the Resentencing Hearing, the Government explained:

On the controlled substances Counts, Doctor Fowler's total Offense Level would be 32 with a Criminal History Category One. On the fraud Counts, Doctor Fowler's Total Offense Level would be 24 with a Criminal History of One. When you put those two together, pursuant to the guidelines, that would lead to a one level over all [sic] increase. So at the end of the day Doctor Fowler's appropriate Offense Level is a level 33 with a Criminal History Category One which yields a guideline range of 135 to 168 months.

Sent'g Hr'g Tr., 6:24-25; 7:1-8, Dec. 6, 2016.

Defense counsel agreed with the Sentencing Guidelines' calculation. *Id.* at 7:9. The Court resentedenced Fowler to a below-guidelines sentence of 68 months of imprisonment on Counts I and XI and 60 months of imprisonment on Count XXI to run concurrently. [Dkt. #1564].

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<sup>1</sup> Without objection, the Court started its analysis at 108 months. Sent'g Hr'g Tr., 17:17-25, Oct. 28, 2014.

Fowler filed a Notice of Appeal [1589] on January 26, 2017. Fowler filed the instant Motion [1620] on July 18, 2017. His appeal is still pending.

### **ANALYSIS**

The Court construes Fowler's Motion for Modification or Reduction of Sentence [1620] as a request for relief pursuant to 18 U.S.C. § 3582(c)(2). Section 3582(c)(2) provides:

[I]n the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered . . . the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) . . . if such a reduction is consistent with the applicable policy statements issued by the Sentencing Commission.

Fowler seeks a reduction of his sentence based on Amendment 782 to the Sentencing Guidelines, enacted on November 1, 2014. Amendment 782 amended the drug quantity table set forth in U.S.S.G. § 2D1.1 by reducing the base level offense by two levels for most drug offenses. *See United States v. Vestal*, No. 17-5080, 2017 WL 5899788, at \*1 (6th Cir. Nov. 29, 2017).

The Court resentenced Fowler after the enactment of Amendment 782. At the Resentencing Hearing, Fowler did not contest the quantity of Opana 40 milligram pills used to determine the appropriate Sentencing Guidelines' range. Sent'g Hr'g Tr., 4:16-22, Dec. 6, 2016. Furthermore, Fowler did not contest the

two-point special skill enhancement. *Id.* at 5:9-12. Ultimately, Fowler was sentenced according to the current Sentencing Guidelines. Therefore, he is not entitled to resentencing.

#### **CONCLUSION**

Accordingly,

**IT IS ORDERED** that Defendant's Motion for Modification or Reduction of Sentence [1620] is **DENIED**.

**SO ORDERED.**

Dated: February 2, 2018

s/Arthur J. Tarnow

Arthur J. Tarnow

Senior United States District Judge